

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**  
**1.Shri Bhanu Bhushan, Member**  
**2.Shri R. Krishnamoorthy, Member**

**Review Petition No. 66/2007**  
**in IA No. 43/2006**  
**in Petition No. 184/2004**

**In the matter of**

Review of order dated 5.2.2007 in IA No. 43/2006 in Petition No. 184/2004  
- Declaration of Nathpa Jhakri HPS as the run-of-river generating station with pondage and revision of the capacity index.

**And in the matter of**

Satluj Jal Vidyut Nigam Limited, Shimla

**.....Petitioner**

vs

1. Punjab State Electricity Board, Patiala.
2. Haryana Power Generation Corporation Ltd, Panchkula.
3. Delhi Transco Limited, New Delhi.
4. Jaipur Vidyut Vitaran Nigam Limited, Jaipur.
5. Ajmer Vidyut Vitaran Nigam Limited, Ajmer.
6. Jodhpur Vidyut Vitaran Nigam Limited, Jodhpur.
7. Himachal Pradesh State Electricity Board, Shimla.
8. Power Development Department, J & K Govt., Srinagar.
9. Engineering Deptt., UT Secretariat, Chandigarh.
10. Uttar Pradesh Power Corporation Ltd., Lucknow
11. Uttaranchal Power Corporation Limited, Dehradun.
12. Principal Secretary (MPP & Power), Govt. of Himachal Pradesh, Shimla.
13. Member Secretary, Northern Regional Electricity Board (NRPC), New Delhi.
14. Executive Director, Northern Regional Load Despatch Centre, New Delhi.
15. Haryana Vidyut Prasaran Nigam Limited, Panchkula.

**..... Respondents**

**The following were present**

1. Shri R. K. Aggarwal, SJVNL
2. Shri Ishwani Bhardwaj, SJVNL
3. Shri Suresh Kumar, SJVNL
4. Shri Sanjay Kumar, SJVNL

5. Shri Jaspal Singh, SJVNL
6. Shri R.S. Rama, SJVNL
7. Shri D. B. Sahay, SJVNL
8. Shri Rajeev Agarwal, SJVNL
9. Shri S. K. Jain, HPPC
10. Shri T.P.S. Bawa, PSEB
11. Shri Padamjit Singh
12. Shri S.R. Narasimhan, NRLDC
13. Shri. S Lakra, NRLDC

**ORDER**  
**(DATE OF HEARING: 22.4.2008)**

The petitioner approached the Commission in Petition No. 184/2004 for approval of the provisional tariff of 235 paise/kWh in respect of Nathpa Jhakri Hydroelectric Project (hereinafter referred to as “generating station”) as agreed to at NREB forum for the period from 1.4.2004 and onwards. The Commission, in its order dated 17.6.2005, decided to accept the provisional tariff of 235 paise/kWh from 1.4.2004 to 31.3.2006, subject to adjustment after final determination of tariff. By converting single part tariff of 235 paise/kWh into two-part tariff, the Commission approved the provisional annual fixed charges for the years 2004-05 and 2005-06 of Rs.1335.25 crore and Rs.1414.83 crore respectively.

2. Subsequently, the petitioner filed an interlocutory application (No. 43/2006) seeking relaxation of the capacity index for the generating station during 2004-05 and 2005-06 due to unprecedented flood situation and high siltation. The petitioner also prayed for a declaration that the generating station is

a 'run-of-river with pondage' type. The Commission disposed of the interlocutory application vide its order dated 5.2.2007 as under :

*“21. In view of the above discussion, we reject the prayer of the petitioner for relaxation of capacity index during 2004-05 and 2005-06. However, we allow the petitioner’s prayer to treat the generating station as Run-of-River with pondage for tariff purposes, but with effect from 1.4.2006 only. The petitioner is also directed to complete the work on the height of the dam by 31.3.2007, failing which the Commission would be constrained to restrict the tariff for the generating station depending on shortfall in peaking support, if any. “*

3. The petitioner, through the present application, has sought review of the said order dated 5.2.2007 and has reiterated its prayers as under:

(a) the generating station may be adjudged as a run-of-river project with pondage for the years 2004-05 and 2005-06, and

(b) the high silt period consequent to the flood in the Satluj river and its tributaries in the year 2005-06 be reconsidered for revision of capacity index, based on availability of machines or exclusion of the high silt period for calculating cumulative capacity index for that year .

4. Reply to the application has been filed by the first and the seventh respondents. On behalf of the first respondent, reply was filed by Shri Padamjit Singh, Advisor (Power). The applicant objected to Shri Padamjit Singh representing the first respondent on the ground that he was not any more in the employment of the first respondent. On a reference, the first respondent clarified

that Shri Padamjit Singh was its Advisor (Power) and was duly authorized to make affidavits, appear and plead before the Commission upto 31.3.2008. At the hearing held on 22.4.2008, Shri Padamjit Singh appeared before us and sought permission to make submissions in his individual capacity. In the interest of justice, he was allowed to make submissions.

5. We have heard the parties on merits of the petitioner's claims, without limiting ourselves to the technicality of maintainability of the review, have gone through the pleadings and proceed to dispose of the matter.

6. It was submitted by the petitioner on 26.4.2005 in the course of hearing of Petition No. 184/2005 that the dam reservoir did not have sufficient pondage even for 3 hours peaking. The Commission took note of the submission in the order dated 17.6.2005. Further, as noticed in para 17 of the order dated 5.2.2007 in IA No. 43/2006 in Petition No. 184/2004, in the 140<sup>th</sup> meeting of the NERB (NRPC), held in December, 2005, the petitioner was persuaded by the Chairman, CEA to utilize the available pondage and provide peaking to the extent permitted by the pond level in the interest of the grid. The petitioner wanted to operate the plant purely in run-of-river mode.

7. From the above, it is apparent that till December, 2005, the generating station was not operating in the peaking mode due to inadequate dam height as also on account of the petitioner's reluctance. This negates the petitioner's claim

for treating the generating station as run-of-river with pondage, till December 2005.

8. Another significant factor is that as against the provisional annual fixed charges of Rs.1335.25 crore allowed vide the Commission's order dated 17.6.2005 for the year 2004-05 based on the consensus arrived at between the petitioner and the beneficiaries at the meeting of NREB held in June 2004 for single-part rate of 235 paise/unit, the total recovery during the year was Rs.1337.07 crore, including incentive of Rs.1.82 crore. Actual saleable design energy of 4467.65 MU achieved during the year was much less than the annual saleable design energy of 5681.92 MU. The saleable per unit cost of energy recovered by the petitioner was thus 299 paise/unit against provisional tariff of 235 paise/unit, taken into account by the Commission for determination of annual fixed charges. Acceptance of the applicant's plea to treat the generating station as run-of-river with pondage would fetch it still higher amount of incentive and would further increase the average rate payable by the beneficiaries.

9. Similarly, due to much reduced generation of energy during 2005-06, the saleable per unit cost of energy recovered by the petitioner has been 298 paise, compared to the provisionally agreed rate of 235 paise/unit. Any relaxations to the petitioner would further raise the average rate payable by the beneficiaries, for 2005-06 as well.

10. Thirdly, during 2004-05, the petitioner has achieved a capacity index higher than the normative capacity index applicable for run-of-river generating stations, without pondage. For this reason also, there is hardly a case for lowering the capacity index norm for the generating station by treating it as run-of-river with pondage type.

11. For the reasons stated above, we do not find any justification, whatsoever for treating the generating station as run-of-river with pondage till December 2005. The Commission, in its order dated 5.2.2007, has already agreed to the generating station being treated as run-of-river with pondage type with effect from 1.4.2006. However, the generating station is providing peaking to the extent of availability of water from the month of January 2006. Therefore, we are satisfied that there may be a case for reconsideration of the earlier decision and to treat the generating station as run-of-river with pondage w.e.f. to 1.1.2006. We order accordingly. Consequently, normative capacity index for the year 2005-06 applicable to the generating station shall be at 88.75%, based on the weighted average capacity index for that year.

12. Next we consider the petitioner's prayer for relaxation of the capacity index on account of the closure of the generating station due to unprecedented floods and abnormal high siltation during for the year 2005-06. We are unable to agree with the petitioner's contention. In the concept of capacity index adopted by the Commission for the hydro generating stations, availability of machines is the primary criterion. While commercial fall-out for reduction in generation on

account of fall in inflow of water is absorbed by the beneficiaries, commercial implications for reduction in generation on account of non-availability of machine, for whatever reason, have to be absorbed by a generating company. As the petitioner has already been immunized against low inflows and through the concept of capacity its payments are linked to machine availability, it cannot claim any further relief citing silt etc as the causes for low machine availability. Besides, it would be unfair to burden, on the above account, the beneficiaries who are already losing in terms of the energy they were entitled to receive from the generating station.

13. In view of the above and for the reasons that the petitioner has recovered per unit charge of 299 paise/unit during 2004-05 and 298 paise/unit during 2005-06, against 235 paise/unit, as noted at para 8 above, we do not find any justification for relaxation of the capacity index as prayed for by the petitioner.

14. This review petition is disposed of with the above directions.

**Sd/-**  
**(R KRISHNAMOORTHY)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated 4<sup>th</sup> June 2008**